

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: INTRAMTA SWITCHED ACCESS §
CHARGES LITIGATION §
§ Civil Action No. 3:14-MD-2587-D
§ (MDL No. 2587)
§
§
THIS DOCUMENT RELATES TO §
ALL CASES §

ORDER

On February 25, 2015 lead and liaison counsel for defendants submitted a notice of filing proposed order on appointments and a proposed order. The court has added line numbers to the proposed order to facilitate submitting objections and has attached this version as an exhibit to this order.

Any plaintiff or defendant in a case that is part of this litigation who objects to any part of the proposed order must submit the objection no later than March 4, 2015. Any such objection must be filed in the Master Docket in this litigation, Civil Action No. 3:14-MD-2587-D. If a timely objection is submitted, the court will permit lead and liaison counsel for defendants to submit a response before entering the order.

SO ORDERED.

February 26, 2015.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: INTRAMTA SWITCHED ACCESS CHARGES LITIGATION §
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§ Civil Action No. 3:14-MD-2587-D
(MDL No. 2587)

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**ORDER APPOINTING DEFENDANTS'
LEAD / LIAISON COUNSEL AND STEERING COMMITTEES**

17 On February 13, 2015, pursuant to the Court’s Case Management and Scheduling Order
18 No. 1 (Docket No. 12) (“CMO No. 1”), Defendants notified the Court that they recommended
19 the appointment of two Steering Committees – one for large and medium-sized local exchange
20 carriers (“LECs”), and the second for small, regional, and rural LECs (collectively the “Steering
21 Committees”). (Docket No. 67.) Thirteen law firms submitted individual applications detailing
22 their qualifications and willingness to serve as members of the Steering Committees. (Docket
23 Nos. 47, 48, 50, 52, 53, 56, 57, 58, 59, 61, 62, 64, 65.)

24 Also on February 13, 2015, Cooley LLP (“Cooley”), counsel for 77 CenturyLink
25 affiliates (collectively “CenturyLink”), filed an application to be appointed Lead / Liaison
26 Counsel for Defendants and a member of the Steering Committee for Large/Medium LECs.
27 (Docket No. 65.) No other applications for Lead or Liaison Counsel for Defendants were filed,
28 and no objections were raised to Cooley’s appointment to these roles. *Id.* at 2 & 18.

29 At the Initial Scheduling Conference on February 18, 2015, no objections were raised to
30 these applications.

ORDER APPOINTING DEFENDANTS' LEAD/LIAISON COUNSEL AND STEERING COMMITTEES

31 Having considered the submissions by counsel, the preferences voiced at the Initial
32 Scheduling Conference, and the criteria set forth in Section III of CMO No. 1, the *Manual for*
33 *Complex Litigation*, and Federal Rule of Civil Procedure 23(g), the Court hereby appoints the
34 below leadership structure for Defendants. The Court has reviewed the applications counsel
35 submitted and finds that all of the lawyers applying for leadership positions have satisfactory
36 credentials and experience to serve in leadership roles in the litigation.

37 **I. LEAD AND LIAISON COUNSEL**

38 **A. Appointment**

39 The Court hereby appoints as Lead and Liaison Counsel for Defendants (“Lead
40 Counsel”):

41 Douglas P. Lobel
42 David A. Vogel
43 COOLEY LLP
44 One Freedom Square | Reston Town Center
45 11951 Freedom Drive
46 Reston, VA 20190

47 in coordination with their local counsel, Michael P. Lynn and Christopher J. Akin of Lynn
48 Tillotson Pinker & Cox, L.L.P.

50 **B. Responsibilities**

51 All Defendants retain the right to choose to act individually in their best interests in these
52 proceedings. However, the large number of counsel and Defendants requires a substantial
53 amount of coordination of litigation efforts. Therefore, in consultation with the Steering
54 Committees, Lead Counsel shall be responsible for coordinating the pretrial activities of
55 Defendants in this litigation. To that end, but nonetheless subject to each Defendant’s retention
56 of the right to choose to act independently in its best interests in these proceedings and each
57 Defendant’s rights under Section IV.1 below, Lead Counsel shall have the following authority

58 and responsibilities, and may undertake these actions in its professional discretion, to the extent
59 the Court permits any of these pretrial activities in this proceeding:

60 1. Solicit the views and positions of Defendants through communications with the
61 Steering Committees and, where appropriate, counsel for individual Defendants;

62 2. Coordinate and manage pretrial proceedings on behalf of all Defendants,
63 including briefing and arguing motions personally or by designee, after consulting with Steering
64 Committees and other Defendants' counsel, with the goals of (a) consolidating common
65 arguments and claims where possible, but also (b) giving appropriate opportunity to differing
66 positions among Defendants;

67 3. Prepare and circulate, or delegate the preparation to others, of written materials
68 for joint submission by multiple or all Defendants, affording reasonable opportunity for review,
69 comment, and approval or disapproval of the Steering Committees or, when appropriate, counsel
70 for individual Defendants;

71 4. Sign joint and/or consolidated documents on behalf of multiple or all Defendants,
72 when (a) Lead Counsel has given a reasonable opportunity for Defendants to object to the
73 documents; (b) a matter is urgent and no opportunity for consultation with other Defendants is
74 present; or, (c) a matter is administrative and Lead Counsel does not believe the substantive
75 rights of any Defendant will be prejudiced;

76 5. After consultation with the Steering Committees, develop and propose to the
77 Court schedules for pretrial matters, including motions, discovery, and other procedures that may
78 arise;

79 6. Coordinate and manage discovery among all Defendants including, but not
80 limited to, preparing joint discovery requests and responses where possible, preparing

81 coordinated schedules for written discovery, document production and review, depositions,
82 subpoenas, and other manners of discovery;

83 7. Coordinate the schedules of fact and expert witness depositions and after
84 consulting with the Steering Committees and other Defendants' counsel, determine the lead
85 examiner(s) for each noticed deposition, where multiple Defendants have an interest in the
86 deposition;

87 8. After consulting with the Steering Committees and other Defendants' counsel,
88 coordinate depositions of Plaintiffs under Rule 30(b)(6), including coordinating and
89 consolidating the list of topics for the depositions, the times and places of the depositions, and
90 the lead examiner(s) for the depositions;

91 9. After consulting with the Steering Committees and other Defendants' counsel,
92 coordinate the identification, retention and testimony of experts or consultants whose testimony
93 will be relied upon by multiple Defendants;

94 10. After consulting with the Steering Committees and other Defendants' counsel and
95 obtaining prior consent from counsel for any Defendant to be bound by a stipulation, enter into
96 stipulations with Plaintiffs as necessary for the conduct of the litigation, including the requisite
97 meet and confer for motions;

98 11. Communicate with the Court and other counsel on behalf of Defendants;

99 12. Coordinate, plan, and lead meetings with co-Defendants and/or either Steering
100 Committee when, after consulting with the Steering Committees and other Defendants' counsel,
101 Lead Counsel reasonably determines that (a) such meetings are appropriate, and (b) the time and
102 manner of the meetings are convenient to a reasonable number of Defendants with an interest in
103 the subjects of the meetings;

104 13. Advise co-Defendants of developments and prepare and distribute periodic status
105 reports;

106 14. Maintain up-to-date lists of counsel;

107 15. Keep complete files of materials in this multidistrict proceeding;

108 16. Maintain, or arrange for the maintenance of, an electronic database of discovery
109 materials;

110 17. Consult with local counsel Lynn Tillotson Pinker & Cox, L.L.P as necessary
111 concerning local practices and Court procedures; and

112 18. Perform such other duties as may be incidental to the above duties or authorized
113 by further order of the Court.

114 **II. STEERING COMMITTEES**

115 **A. Appointment**

116 The Court hereby appoints the following counsel (listed in alphabetical order) to the
117 Large / Medium LEC Steering Committee (“Large LEC Committee” and each a “Member”):

118 Douglas P. Lobel
119 David A. Vogel
120 COOLEY LLP
121 One Freedom Square | Reston Town Center
122 11951 Freedom Drive
123 Reston, VA 20190
124
125 Christopher W. Savage
126 Adam S. Caldwell
127 DAVIS WRIGHT TREMAINE LLP
128 1919 Pennsylvania Avenue, NW, Suite 800
129 Washington, DC 20006
130
131 Juliet A. Cox
132 Eric S. Johnson
133 KUTAK ROCK LLP
134 Two Pershing Square

135 2300 Main Street, Suite 800
136 Kansas City, MO 64108
137

138 Matthew A. Brill
139 John S. Cooper
140 LATHAM & WATKINS LLP
141 555 Eleventh Street, NW, Suite 1000
142 Washington, DC 20004
143

144 Christian F. Binnig
145 Jeffrey M. Strauss
146 MAYER BROWN LLP
147 71 S. Wacker Drive
148 Chicago, IL 60606
149

150 Russell Blau
151 MORGAN, LEWIS & BOCKIUS LLP
152 2020 K Street, NW
153 Washington, DC 20006

154 The Court hereby appoints the following counsel (listed in alphabetical order) to the
155 Small / Regional / Rural LEC Steering Committee (“Small LEC Committee” and each a
156 “Member”):

157 Gerard J. Duffy
158 BLOOSTON, MORDKOF SKY, DICKENS, DUFFY & PRENDERGAST LLP
159 2120 L Street, NW, Suite 300
160 Washington, DC 20037
161

162 Gregory R. Merz
163 GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.
164 80 South 8th Street, Suite 500
165 Minneapolis, MN 55402
166

167 Brook B. Brown
168 Carl R. Galant
169 McGINNIS LOCHRIDGE & KILGORE LLP
170 600 Congress Avenue, Suite 2100
171 Austin, TX 78701
172

173 Todd A. Holleman
174 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
175 150 West Jefferson, Suite 2500
176 Detroit, MI 48226

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177 James A.L. Buddenbaum
178 Travis W. Montgomery
179 PARR RICHEY OBREMSKEY FRANDSEN & PATTERSON LLP
180 201 North Illinois Street, Suite 300
181 Indianapolis, IN 46204

B. Responsibilities

193 Each Steering Committee shall coordinate and manage the mutual positions or
194 differences of opinions of the LECs with whom they are aligned. The Steering Committees shall
195 work with Lead Counsel to coordinate the litigation efforts of Defendants. Subject to each
196 Defendant's retention of the right to choose to act independently in its best interests in these
197 proceedings and each Defendant's rights under Section IV.1 below, each Steering Committee
198 shall have the following responsibilities, as these matters relate to the Defendants with whom
199 each Committee is aligned ("Aligned Defendants"):

200 1. Identify areas of consensus or differences of opinion to inform Lead Counsel's
201 activities, including through regular contact with counsel for the Aligned Defendants;

202 2. Meet and confer as needed regarding the completion of Aligned Defendants'
203 pretrial activities;

204 3. Self-organize in any manner deemed appropriate by the Steering Committee,
205 including, by way of example, appointment of a Chair, or delegation of lead responsibility for
206 various tasks or issues;

207 4. Coordinate efforts with Lead Counsel to research and present matters to the Court
208 and draft documents;

209 5. Designate counsel to participate in subcommittees as needed to address particular
210 demands of the litigation;

211 6. Oversee the timely completion of discovery deadlines and the submission of
212 discovery materials by the Aligned Defendants;

213 7. Consolidate discovery to eliminate repetition as much as possible;

214 8. Hold meetings and distribute periodic status reports;

215 9. Communicate on behalf of Aligned Defendants at pretrial proceedings and in
216 response to any inquiries by the Court, subject to the right of any Aligned Defendant's counsel to
217 present non-repetitive individual or different positions; and

218 10. Perform such other duties as may be incidental to the above duties or authorized
219 by further order of the Court.

220 **III. DEFENDANTS' JOINT PRIVILEGES**

221 The Court recognizes the need for cooperation of Defendants and their counsel for the
222 orderly and expeditious resolution of this litigation. Defendants' confidential communications in
223 the course of their joint defense shall not, on that basis alone, be deemed to waive any privilege
224 or protection, including without limitation the attorney-client privilege, the work-product
225 doctrine, or any other privilege to which a party may otherwise be entitled. Any cooperative
226 efforts by Defendants shall not in any way be used against any of them, be cited as purported
227 evidence of wrongful action or wrongful conduct, or be communicated to any jury.

228 **IV. OBJECTIONS AND LIMITATIONS**

229 1. Any Defendant (“Objecting Defendant”) that objects to actions taken, or to
230 impending actions about to be taken, by Lead Counsel or by either Steering Committee shall
231 promptly notify Lead Counsel and the Steering Committee as appropriate. All Defendants shall
232 use their best efforts to resolve these objections. In unusual circumstances and upon a showing
233 of good cause, an Objecting Defendant may file a motion with the Court to set aside an action, or
234 to enjoin a pending action, of Lead Counsel or a Steering Committee. However, no Objecting
235 Defendant is relieved of complying with any order or deadline of this Court merely by having
236 raised such an objection or filing such a motion. An Objecting Defendant must independently
237 take whatever actions are necessary for it to comply with Court orders and deadlines.

238 2. Serving as Lead Counsel or as a Member of either Steering Committee shall not
239 create any professional, ethical, fiduciary, or legal obligations with any Defendant other than its
240 own clients. Neither Lead Counsel nor any Member of either Steering Committee shall be liable
241 to any other person or party for any claim or cause of action of any kind, where such claim or
242 cause of action arises from or relates to any action taken in good faith in the performance of their
243 duties hereunder. No Defendant or attorney for any Defendant serving as Lead Counsel, Liaison
244 Counsel, or serving on either Steering Committee shall receive compensation or reimbursement
245 from any other Defendant for attorney’s fees expended in providing those services.

246 3. Any counsel may petition the Court to withdraw from their appointment(s) herein
247 if they no longer represent any Defendants in this proceeding or upon a showing of good cause
248 for other reasons.

249 ~~XXXXXX Any objections to this Order shall be filed within seven (7) days~~ [to be removed from
final order in view of procedure permitting objections before entry of order]

250 **SO ORDERED.**

251
252 [DATE]

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SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE